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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE:

Office: Miami (Tampa)

Date:

DEC 12 2002

IN RE: Applicant:

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The acting district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The acting district director determined that the applicant was ineligible for adjustment of status because he was found to be amenable to deportation under section 237(a)(2)(B)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1227(a)(2)(B)(i). The acting district director, therefore, denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(2) of the Act provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802).

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(C) Any alien who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

The record reflects the following:

1. On April 27, 1983, in the Circuit Court of Cook County, Illinois, Case No. [REDACTED] the applicant was indicted for murder. On June 25, 1984, the applicant was adjudged guilty of voluntary manslaughter (lesser included charge). He was sentenced to probation for a term of 2 years, the first 6 months to be spent in the county jail, time served.

2. On November 9, 1987, in the Circuit Court of Cook County, Illinois, Case No. [REDACTED] the applicant was adjudged guilty of Count 1, delivery of a controlled substance, and Count 2, armed violence. He was sentenced to imprisonment for a term of 16 years as to Count 1, and 16 years as to Count 2, each sentence to run concurrently with the other.

Voluntary manslaughter is a crime involving moral turpitude. Matter of Chavez-Calderon, 20 I&N Dec. 744 (BIA 1993); Matter of Rosario, 15 I&N Dec. 416 (BIA 1975).

The acting district director, after referring to the applicant's convictions, concluded that the applicant is amenable to deportation (removal) under section 237(a)(2)(B)(i). The record, however, reflects that the applicant was paroled into the United States on May 20, 1980, pursuant to section 212(d)(5) of the Act, 8 U.S.C. 212(d)(5). It has been held in Matter of Torres, 19 I&N Dec. 371 (BIA 1986), that an alien paroled into the United States pursuant to section 212(d)(5) of the Act remains subject to exclusion proceedings (inadmissibility) pursuant to sections 235 and 236 of the Act. Section 212(d)(5) specifically states that an alien paroled into the United States pursuant to that section must be dealt with as any other applicant for admission upon termination of the parole. See also Matter of Badalamenti, 19 I&N Dec. 623 (BIA 1988); Matter of Ching and Chen, 19 I&N Dec. 203 (BIA 1984).

Therefore, the applicant is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his conviction of a crime involving moral turpitude. He is also inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act based on his conviction of delivery (trafficking) of a controlled substance. There is no waiver available to an alien found inadmissible under section 212(a)(2)(C) of the Act.

The applicant is ineligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966. The decision of the acting district director to deny the application will be affirmed.

ORDER: The acting district director's decision is affirmed.